IN THE HIGH COURT OF THE JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2749 OF 2005.

Shri.Rajiv Hanmantrao Kulkarni ..Applicant

V/s

The State of Maharashtra ...Respondent

Shri. A.M. Kulkarni for the Applicant.
Mr. A.S. Gadkari,A.P.P. for the Respondent.

CORAM : A.S.OKA, J.
DATED : JUNE 09, 2005.

P.C.:

1. This application by the Applicant is for grant of bail. The Applicant was arrested in connection with the crime No.12/2005 registered with the Vishrambaug Police Station, Sangli for the offences punishable under section 8, 20 and 22 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter referred to as 'the said Act of 1985'). The investigation of the said offence was subsequently transferred to Local Crime Branch, Sangli.

2. The application made by the Applicant before the Sessions Court for grant of bail has been rejected by Judgment and Order dated 15th April 2005 passed by the learned Second Additional Sessions Judge, Sangli. The case of the prosecution is that on an information received by the police that two persons are likely to bring heroine in the city of Sangli on 14th March 2005,

a trap was laid near Paranjpe Housing Scheme, Sangli. The case of the prosecution is that the Police Party found one car bearing registration No.MH-10-C-99 which was stopped by the Police Party. In the said car accused No.3 Rahul and accused No.4 Dadasaheb were found and they were in possession of 112 grams of heroine powder which is worth Rs.2,24,000/-. The heroine powder was seized from said two accused persons in presence of the panch witnesses when it was revealed that the said two accused had obtained the said heroine powder from the Applicant in this application. The Applicant was arrested on 17th March 2005. Initially police custody was granted and subsequently the Applicant is in Magisterial custody. The fourth accused in this case is one Pratap whose name was revealed during the course of investigation. Case of the prosecution is that the said accused Pratap made disclosure statement before the Investigating Officer and agreed to produce 26 grams of ‘gard’ which he has allegedly concealed on a beach in the State of Goa. The said quantity of ‘gard’ was recovered from the said beach at Goa. Further the case of the prosecution is that the said Pratap had disposed of large quantity of heroine by dumping the same in Arabian Sea by throwing it from old Mandavi bridge at Panji, State of Goa. The Applicant herein and the said Pratap filed separate

applications for bail which were considered and disposed of together.

3. The case made out before the learned Sessions Judge was that the Applicant was absolutely innocent and was having family of wife and a 13 years old son. It was contended that the Applicant had no past record of any criminal activity and he held from a respectable family. The case made out is that vide publicity was given in the newspapers to the trap laid on 14th March 2005 and even thereafter the Applicant did not abscond. While rejecting the application made by the Petitioner the learned Sessions Judge had redcorded statement of the learned prosecutor that Sections 20 and 22 of the said Act of 1985 are not attracted and the case against the Applicant is as regards offence under section 8-c of the said Act of 1985. The learned Judge held that nothing was recovered from the Applicant. The learned Judge further held that the Applicant has made incriminating statements before the Investigating Officer in which he admitted to have received the heroine and to have been in possession thereof. The learned Judge observed that the incriminating statement of the Applicant was not at all admissible in evidence. However, he observed that to a limited extent the statements made by the Applicant can be relied upon to

show positive participation of the Applicant in the offence. The learned Judge held that fifth accused one Anil is still at large. These are the reasons on which the learned Sessions Judge rejected the plea of grant of bail by the Applicant.

4. This application will be governed by Section 37(1)(b) of the said Act of 1985. The said provision lays down that bail cannot be granted unless Public Prosecutor has been given opportunity to oppose the application and unless the Court is satisfied that there are reasonable grounds for believing that the Applicant is not guilty of such offence and that he is not likely to commit any offence while on bail. In a recent decision of the Apex Court reported in 2004(3) Supreme Court Cases 549, COLLECTOR OF CUSTOMS, NEW DELHI V/s. AHMADALIEVA NODIRA, the Apex Court held thus:

> 7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity of the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction

> contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantital probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify staisfaction that the accused is not guilty of the alleged offence.

In the light of the law laid down by the Apex Court the submissions made by the counsel appearing for the parties will have to be appreciated. In paragraph No.9 of the Judgment of the learned Sessions Judge, he has recorded concession of the learned Public Prosecutor that only offence attracted in case of this Applicant is under Section 8(c) of the said Act of 1985. The learned Public Prosecutor conceded before the learned Sessions Judge that Sections 20 and 22 will not be attracted. The learned Sessions Judge had therefore, recorded that the only allegation against the Applicant is that he was found to be in possession of a narcotic drug heroine. Shri. Gadkari, learned A.P.P. has not disputed the correctness of the concession recorded by the learned Sessions Judge.

5. The learned Sessions Judge has observed in paragraph No.10 of the Judgment that case papers

reveal that the statement of the Applicant herein and another Applicant before it have admitted before the Investigating Officer to have received heroine and to be having in possession thereof. The learned Judge has stated that the Applicant herein admitted before the Investigating Officer to have tried to dispose of heroine with the assistance of other Accused Rahul and Dadasaheb. It is also recorded by the learned Sessions Judge that though the Applicant was in Police Custody for 14 days, nothing has been recovered from the Applicant. The learned Sessions Judge relied upon incriminating statements made by the Applicant before the Investigating Officer. The learned Judge held that though such incriminating statements are not at all admissible in evidence, the same will have to be considered as a material collected by the Investigating Officer. Thus, the grounds of rejection which are set out by the learned Sessions Judge are based on confessional statement of the Applicant found to have been incorporated the statement of the Investigating Officer and incriminating statement of the Accused. There is no dispute before me that though the Police Custody for the period of 14 days was granted, till today there is no recovery from the Applicant.

6. The learned Sessions Judge has himself recorded that incriminating statements of the accused cannot be the legal evidence. There are incriminating statements of the co-accused which are referred to by the learned Sessions Judge in which the Applicant is sought to be implicated. The learned Sessions Judge has himself stated that the said statements cannot be the evidence. While considering the Application for grant of bail Section 37 mandates that bail cannot be granted unless the Court is satisfied that there are reasonable grounds for believing that the Applicant is not guilty of the offences alleged against him. As held by the Apex Court in the case of Collector of Customs, New Delhi Vs. Ahmadalieva Nodira(Supra), the expression "reasonable ground" means something more than prima facie ground. It contemplates a substantial probabale cause for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the facts of this case if incriminating statements of the Applicant allegedly recorded by the Investigating Officer and the incriminating statements of the co-accused recorded by the Investigating

Officer can never form part of evidence against the Applicant, surely the said statements cannot be considered for recording satisfaction either way. In first part of paragraph No.10 of the Judgment of the learned Sessions Judge he has recorded that nothing has been recovered from the Applicant. Thus, even according to the prosecution the only material available against the Applicant is the alleged incriminating statements of the Applicant and his co-accused. Apart from that there is no material whatsoever in support of the prosecution case against the Applicant.

7. In the Sessions Court no reply was filed by the prosecution to the Application for bail and even in this Court also no reply is filed. No case has been made out regarding the criminal antecedants of the Applicant. There is no reply filed on record in both the Courts expressing any apprehension that the Applicant is likely to commit any offence while on bail. Obviously, it appears that there is no history of criminal antecedents so far as the Applicant is concerned. It is pointed out that a specific contention was raised before the learned Judge that vide publicity was given in the newspapers to the trap laid on 14th March, 2005 and recovery of heroine. It

is pointed out that the Applicant did not abscond and continued to stay at Sangli and was arrested on 17th March, 2005. Therefore, there is nothing on record in support of the apprehension of possibility of the Applicant committing any offence while on bail.

8. As stated earlier this is a case where no legal evidence is available to the prosecution against the Applicant. As recorded earlier the only allegation against the Applicant is about the contravention of the Section 8(C) of the said Act of 1985, that is, regarding the possession of heroine and there is absolutely no evidence as of today about the Applicant possessing heroine at any time. This is not the case where some material is available against the Applicant which could have been used at the time of trial. There is total lack of the material as against the Applicant to substantiate allegation regarding possession of heroine. Considering all these facts, I am satisfied that there are reasonable gournds for believing that the Applicant is not guilty of offence alleged against him and that he is not likely to commit any offence while on bail.

9. Considering the involvement of narcotic substance in this matter, the bail amount will have to be fixed

at Rs.1,00,000/-. Till the trial is completed, apart from attending the Trial Court on the dates fixed, the Applicant will have to attend the office of Local Crime Branch, Sangli at 11.00 a.m. on every Monday. It is obvious that the observations made in this Order are only for limited purpose of considering the Application for bail.

10. Hence, I pass the following order:

: O R D E R :

i)The Applicant shall be enlarged on bail in connection with crime No.12 of 2005 initially registered at Vishrambaug Police Station, Sangli subject to Applicant furnishing personal bond in sum of Rs.1,00,000/- with two local sureties in the like amount.

ii) The bail is granted subject to condition that the Applicant will attend the office of Local Crime Branch, Sangli on every Monday from 11.00 a.m. to 2.00 p.m. till the completion of the trial. The Applicant will not make any attempt to influence or pressurise the prosecution witnesses and will not attempt to tamper with the evidence.

iii) The Applicant will co-operate with the learned Trial Judge for disposal of the trial. In case trial is delayed on account of any default on the part of the Applicant, entry to that effect will be made by the learned Trial Judge in roznama which may be the ground for cancellation of bail.

iv) Parties to act upon an authenticated copy of this order.

JUDGE